

In re) Fair Hearing No. 10,834
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Appeal of)

The petitioner appeals the decision by the Department of Social Welfare denying her application for Medicaid. The issue is whether the petitioner is disabled within the meaning of the pertinent regulations.

1. The petitioner is a fifty-year-old-woman with a G.E.D. who has a lengthy and substantial work history, recently primarily in the hotel industry where she has worked as a housekeeper, front desk and night clerk and as a switchboard operator. The switchboard operator job, which was her last, required her to sit for seven hours, to bend and reach and to carry light articles. She left that job in 1989 and has not worked since. The petitioner can use computers and FAX machines and can balance books.

2. In May of 1988, while working as a night clerk on security patrol at a large hotel, the petitioner was startled by some men in a hallway and fell back against a wall injuring her back. She developed muscle spasms and experienced severe pain radiating from her leg to her knee which resulted in significant limitation in her range of motion. She was

diagnosed as suffering from acute lumbar strain, mild degenerative joint changes, and left side scoliosis. She underwent an intensive physical therapy protocol for the following few weeks designed to help her return to work. She did return to work in July for four hours per day restricted to light duty and required to avoid prolonged sitting and take breaks for intermittent standing. Her employer accommodated her needs and reassigned her to the switchboard job. Nevertheless, she continued to experience some pain in her back which responded to physical therapy. By September of 1988, the petitioner was released to full-time duty as a switchboard operator.

3. The petitioner thereafter worked a forty-hour week in which she sat for forty-five minutes and stood and stretched for fifteen minutes. Nevertheless, she continued to feel pain while reaching for the telephone cables or walking to the FAX machine. Her back and neck felt tense and she became very irritable. Eventually she was working as little as seventeen hours per week and her employer was driving her home in exhaustion. She continued with her physical therapy.

4. In the summer of 1989, when she was experiencing low back pain and decreased sensation on the left side, the petitioner voluntarily attended a back clinic but was unable to complete the course due to poor tolerance. Her physical therapist noted that her pain was continuing in spite of the

physical therapy and that her thoracic area was weak.

5. The petitioner continued in physical therapy until December 1989. At that time she decided to leave her job because her hours were so reduced (seventeen hours per week) and the accommodations so generous that she felt she was no longer earning her pay. She did not continue physical therapy because she had no more insurance and was under the impression that such therapy could do no more for her. The petitioner has not worked, seen a doctor, or been in therapy since December of 1989.

6. The petitioner describes herself as having constant pain in the back of her neck, and middle and lower back all of the time which radiates down to her hands and legs. Sharp pains frequently shoot down her side. She treats herself with hot baths, exercises, Tylenol and Flexeril, a prescription medicine left over from a previous prescription. She cannot sit comfortably for more than fifteen minutes. She tries to walk for her back but can go no more than a third of a mile without weakening and pain. She can stand for no more than ten minutes. Her ability to lift due to back weakness or pain is very limited. Lifting five pounds of sugar causes her pain and sometimes she has difficulty even lifting a glass or bowl. She is unable to pick up even the smallest of her twenty-two grandchildren many of whom visit her regularly.

7. The petitioner's pain is worsened by activities such as sweeping or mopping. She has had to give up skiing,

bicycling and jogging which she used to enjoy. She spends her days knitting and crocheting for short periods and talking to the elderly on the phone. She is principally cared for by her husband who is home during the day. She would like to return to work but feels there is little hope that she can do so.

8. The petitioner was examined in July of 1991 by a consultant for D.D.S. He did not contradict the abnormal findings made by other physicians and himself observed some restrictions of motion in the spine. He thought an X-ray or CT scan might be helpful in diagnosing her problem but none was ordered. He described her back pain as of "multifactorial etiology". He noted that "she may have some true skeletal abnormalities". He opined that she appeared to be "maximizing her symptomatology" because she had been pursuing disability for some time and because he felt she was resisting tests.

9. The petitioner's testimony with regard to her restrictions are found to be entirely credible and well-supported in the lengthy although not entirely current medical evidence. The petitioner's long and productive work history plus her repeated attempts at therapy and work after her accident belie insinuations made in the consultant's report that the petitioner is unmotivated or exaggerating her symptoms. There is nothing in the reports of any persons who actually treated her suggesting that she is exaggerating her symptoms or malingering in any way. On the

contrary, those reports contain specific physical findings supporting her claims of disabling pain.

10. Based on the above, it is found that the petitioner does not have the capacity to do even sedentary work which primarily requires sitting with standing breaks and light lifting due to pain associated with lumbar strain and mild joint disease. The credible evidence shows that the petitioner was unable to do this type of work for more than three to four hours per day even with a very accommodating employer. Even such a light workload left her exhausted.

ORDER

The decision of the Department is reversed.

REASONS

Medicaid Manual Section M211.2 defines disability as follows:

Disability is the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, or combination of impairments, which can be expected to result in death or has lasted or can be expected to last for a continuous period of not fewer than twelve (12) months. To meet this definition, the applicant must have a severe impairment, which makes him/her unable to do his/her previous work or any other substantial gainful activity which exists in the national economy. To determine whether the client is able to do any other work, the client's residual functional capacity, age, education, and work experience is considered.

The evidence here clearly shows that the petitioner has a medical impairment with resulting physical restrictions (primarily pain) which prevented her from working more than a few hours per day in a very sedentary job two years ago

and continue to so restrict her. As such, her condition is equal in severity and duration to those listed in the category of impairments under musculoskeletal disorders, at 20 C.F.R. § 404, Subpart P., Appendix 1, Rule 1.01. See 20 C.F.R. § 416.926.

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